IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 135 OF 2005

RANJANA KAUL .. APPELLANT

Versus

UMESH BRIJKRISHNAN KAUL .. RESPONDENT

Ms. Manjari Shah i/b M/s. Thakore Jariwala & Assocs. for appellant

Ms. Manjula Rao with Ms. G.P. Mulekar for R

CORAM:-SMT. RANJANA DESAI &

D.B. BHOSALE, JJ.

DATED:- 23/1/06

P.C.

. The appellant wife has challenged in this appeal the judgment and order dated 7/6/05 passed by the Family Court, Pune in Petition No. A-263 of 2005 filed by the respondent for restitution of conjugal rights. The judgment and order which is impugned in this appeal is passed ex parte. The Family Court has granted decree of restitution of conjugal

rights in favour of the respondent against the appellant. The Family Court has held that the respondent is entitled to meet daughter Shrushti when he goes to Gurgaon, Haryana and would also be entitled to meet her at Pune, when she would be at Pune. The Family Court has further ordered that during Summer, Diwali and Winter vacation the respondent would be entitled to the temporary custody of daughter Shrushti for one half vacation as per her convenience.

2. We have heard the learned counsel for the parties.

3. Admittedly the petition for restitution of conjugal rights was filed in the Family Court at Pune, on 2/4/05. On that day summons was issued to the appellant. It appears that during the pendency of this petition the appellant approached the Supreme Court sometimes in May, 2005 for transfer of the case to Gurgaon where she is working and residing with her parents.

4. On 7/6/05 the present ex parte decree came to be passed. According to the appellant she got to know about it on 10/9/05 and thereafter she has

preferrred the present appeal. Admittedly on 12/12/05, the Supreme Court has dismissed the application filed by the appellant. The copy of the Supreme Court's order has not been produced before us by either parties. We are informed that the application was dismissed because objections were not removed. We, however, are not certain as to for what reason the application came to be dismissed for want of copy of order of the Supreme Court.

5. It is also an admitted position that the appellant has moved an application under Section 125 of the Code of Criminal Procedure in Gurgaon Court for maintenance. That application is pending.

6. Without going into the merits of the rival contentions, in the facts and circumstances of the case, we are of the opinion that the impugned judgment and order being ex parte needs to be set aside so that the Family Court can dispose of the petition afresh after hearing both sides.

7. The learned counsel for the appellant contended that since the appellant is staying at Gurgaon and

working there, it is inconvenient for her to appear before the Family Court at Pune and, therefore, she wishes to approach the Supreme Court for transfer of the proceedings to Gurgaon. If the appellant wants to approach the Supreme Court she can undoubtedly do so but, if she does approach the Supreme Court she must make efforts to get the said petition disposed of in the shortest possible time because we do not want recurrence of the same events again. If the application for transfer filed in the Supreme Court is kept pending the Family Court may hesitate to pass a final order. In fact, if the appellant had diligently prosecuted the earlier transfer application filed before the Supreme Court perhaps the present unhappy situation would not have arisen. Therefore, the appellant must approach the Supreme Court at the earliest for appropriate orders, if she so desires and prosecute her application diligently.

8. In the circumstances and in the facts of this case, we pass the following order:

a) The impugned judgment and order dated 7/6/05 passed by the Family Court at Pune

in Petition No. 263 of 2005 is quashed and set aside;

b) The Family Court at Pune shall fix the first date of hearing of the petition after one month from the date of receipt of this order and shall dispose it off within a period of three months therefrom. The parties shall approach the Family Court with copy of this order for that purpose. The Family Court may also issue notice to the parties for this purpose, if the need arises: The Family Court shall decide the petition, independently in accordance with law, after hearing both sides. We have not expressed any opinion on the merits of the case.

c) As desired and expressed by the appellant, it is open for her to approach the Supreme Court for transfer of the petition or for any other order as she may be advised at the earliest and in any case within the aforesaid period of one month from today and obtain appropriate

orders therefrom and produce a copy of the Supreme Court's order before the Family Court at Pune.

d) It appears that admittedly in the application for maintenance in the Gurgaon Court, Haryana, the appellant has prayed for Rs.15,000/- per month for the daughter. However, in paragraph 8 thereof she has stated that she is spending an amount of Rs.6500/- for the daughter. Therefore, in the circumstances of the case and without prejudice to the rights and contention of the parties we direct that during this period, the respondent shall pay a sum of Rs.10,000/- per month for daughter Shrushti. The respondent shall send the said amount by Demand Draft or by transfer from bank to bank.

e) We are infomrd that 5th February, 2005 is the birthday of daughter Shrushti. On that day, as agreed by the parties, the appellant shall take daughter Shrushti to Garden Palam Vihar which is situated near

her residence at 10 a.m. The respondent shall remain present and shall be in the company of daughter Shrushti from 10 a.m. to 1 p.m. On 2nd and 4th Sunday of each month till the disposal of the petition, the respondent shall by prior intimation on telephone to the appellant meet daughter Shrushti at the same place. The time and duration of meeting will be the same as above. Parties may vary it only by mutual agreement.

f) Appeal is disposed of in the aforestated terms.

g) In view of the above, all other applications stands disposed of.

(SMT. RANJANA DESAI,J.)

(D. B. BHOSALE, J.)